



THE CITY OF MIDLAND, TEXAS

RQ-546

February 25, 1993

GOV

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The Honorable Dan Morales
Attorney General, State of Texas
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CERTIFIED MAIL NO
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RQ-546

file # ~~ME 19152~~
ID# 19152
PM 2/26/93

Attention: Open Government Division

Dear Attorney General Morales:

The City of Midland has received a request pursuant to the Texas Open Records Act, Tex. Rev. Civ. State. Anno. art 6252-17a (Vernon 1970) (the "Act"). Pursuant to Section 7(a) of the Act, the City of Midland hereby requests that you issue an opinion as to whether or not the records requested are to be made available to the requesting party. The request was hand delivered to the City on February 16, 1993.

The request is attached hereto as Exhibit "A" and essentially inquires as to the name and address of a person who brought a cat into the Midland Animal Control Shelter after trapping the cat with his own trap. It is the City's position that the identity of this person is exempt from disclosure under Section 3(a)(1) of the Act because the person is an informer to the animal control authorities and is protected by the informer's privilege as discussed in Open Records Decision No. 156 (1977) ("ORD 156").

THE FACTS:

On January 18, 1993, an individual brought a cat to the Midland Animal Control Shelter which had been trapped with a trap belonging to that individual. A city trap was not used. (Thus, Open Records Letters 91-300 and 90-248 dealing with the public disclosure of citizens using city owned animal traps are not applicable. However, both letters support our position that complainants to an animal control shelter are exempt from disclosure.)

On or about January 19, 1993, the cat's owner picked up the animal and orally requested the name and address of the person who had turned the cat in. The employees at Midland Animal Control refused to reveal the identity of the individual.

Attached hereto as Exhibit "B" is the information that is

being requested by the cat owner; this is the information card kept on file at the animal control shelter memorializing the impoundment and subsequent release of the cat. The name of the person who trapped the cat and surrendered it to Animal Control is on the reverse side of the card. All the exhibits attached hereto are not to be further disclosed to any person outside the Opinions Committee or yourself.

The City of Midland has an animal control ordinance a copy of which is attached hereto as Exhibit "C". The owner of the cat in question was in violation of this ordinance and was given a citation. The specific provision of the ordinance, is set out below:

Section 6-2-2:

- (A) No person owning, keeping, possessing, harboring or maintaining a dog or other animal shall allow said dog or other animal to be at large.

STATEMENT OF ISSUE:

Is the name and address of an individual who traps an at large animal and turns it into the Midland Animal Control Shelter, thereby facilitating the enforcement of a city ordinance, exempt from disclosure under Section 3(a)(1) of the Act?

DISCUSSION OF ISSUE:

According to ORD 156, Section 3(a)(1) of the Act excepts from required public disclosure the name of a person who makes a complaint about another individual to a city's animal control division, so long as the information furnished discloses a potential violation of state law.

In ORD 156, the complainant had reported the alleged mistreatment of a dog to the authorities at the El Paso animal shelter. The complainant's identity was protected because he was considered to be the informant of a possible violation of a state law. (Specifically, Section 42.11(a) of the Penal Code concerning mistreatment of animals.)

It is our position that the decision in ORD 156 is controlling and that the only difference in our case is that the complainant captured the cat, instead of calling in a complaint, and, instead of facilitating the enforcement of a state law, a city ordinance was involved. There is no question that complainants are protected from disclosure. See Open Records Letter 91-300 and Open Records

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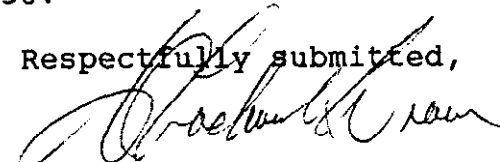
Letter 90-248. The question is whether someone who captures a cat and brings it to Animal Control is a complainant. Given the fact that ORD-156 holds that a caller into an animal control shelter is a complainant and is thereby exempted, the city's position is that a person who captures an at large cat and turns it into an animal control shelter is equally protected from disclosure.

The policy behind the informer's privilege is applicable to our case. "The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law informant officials and, by preserving their anonymity, encourages them to perform that obligation." (emphasis added) Roviaro v. United States, 353 U.S. 53 (1957) as quoted in ORD 156.

CONCLUSION:

It is the City of Midland's position that Section (3)(a)(1) of the Act is applicable to a person who traps an animal and brings it into an animal control shelter where an ordinance is in effect prohibiting cats at large. This person, by capturing the animal and bringing it in, is a complainant complaining of the violation of an ordinance: a law. That person is facilitating law enforcement and should be afforded the same protection given to those who call in the complaint of a possible violation of state law, as was the case in ORD 156.

Respectfully submitted,



G. Chadwick Weaver
Assistant City Attorney

GCW/sd

Attachments

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